

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

PABLO SALINAS BRITO §
VS. § CIVIL ACTION NO. 1:11cv316
JODY R. UPTON §

MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Pablo Salinas Brito, an inmate confined within the Bureau of Prisons, proceeding *pro se*, filed the above-styled petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. The court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable orders of this court. The Magistrate Judge has submitted a Report and Recommendation of United States Magistrate Judge concerning this matter. The Magistrate Judge recommends the petition be denied.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and pleadings. Petitioner filed objections to the Report and Recommendation.

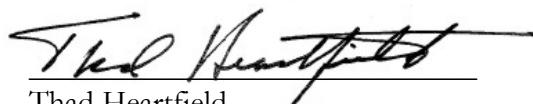
The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. After careful consideration, the court concludes the objections are without merit. For the reasons set forth by the Magistrate Judge, the Supreme Court's decision in *United States v. O'Brien*, ___ U.S. ___, 130 S.Ct. 2169 (2010), does not provide petitioner with a basis for relief in this proceeding. The Court's decision in *O'Brien*, which held that the question of whether a firearm is a machine gun is an element of the offense set forth in 18 U.S.C. § 924(c)(1)(B)(ii), did not decriminalize any of the conduct for which petitioner was convicted. *Day v. Tamez*, 458 Fed.Appx. 343, 344 (5th Cir. 2012).

ORDER

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and

conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge is
ADOPTED. A final judgment shall be entered denying the petition.

SIGNED this the 21 day of May, 2012.



Thad Heartfield
United States District Judge